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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,937	12/12/2003	John A. Gardner JR.	65961-0129	1448

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EXAMINER	
AHMAD, NASSER	
ART UNIT	**PAPER NUMBER**
1772	

DATE MAILED: 11/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/734,937	GARDNER, JOHN A.	
	Examiner	Art Unit	
	Nasser Ahmad	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 August 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *53-67* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *53-67* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Rejections Withdrawn

1. Claims 53-55, 57, 65-66 and 67 rejected under 35 USC 102(e) as being anticipated by Wirth made in the last Office Action of May 23, 2005 has been withdrawn in view of the amendment filed on August 23, 2005.

2. Claim 56 rejected under 35 USC 103(a) as being unpatentable over Wirth in view of Ianazzi made in the last Office Action has been withdrawn in view of the amendment.

3. Claim 58 rejected under 35 USC 103(a) as being unpatentable over Wirth in view of Rafferty made in the last Office Action has been withdrawn in view of the amendment.

Double Patenting Rejection Withdrawn

4. Claims 59-64 rejected under 35 USC 101 as claiming the same invention has been withdrawn in view of the amendment.

Response to Arguments

5. Applicant's arguments with respect to claims 59-67 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 53-55, 57, 65-66 and 67 are rejected under 35 U.S.C. 102(e) as being anticipated by Wirt (5728342).

Wirt relates to a layered composite structure comprising an outer layer (48) with an opaque visual appearance defining the exterior surface of a panel structure (col. 4, lines 50-56), and an inner layer (46) adhered to the inner surface of the outer layer. The inner layer further comprises a pre-formed seam defining structure (38) defining a frangible line (28) corresponding to an invisible tear seam. The outer layer and the inner layers are adhered together because they are laminated together. The seam defining structure (38) is bonded to the inner layer, which includes adhesive bonding. The seam defining structure includes glass filled polymer, which would inherently provide for the structure material to have a lower tensile strength than said inner layer because the presence of filler such as glass bead in the polymer layer of the seam structure would lower its tensile strength as stated in the instant specification, page-10, paragraph-[0042]. The structure further comprises a woven fabric layer between the structure (38) and the foam layer (46) for reinforcement. The woven fabric is understood to include open mesh fabric. The outer layer and the inner layer can be polyurethane (col. 4, lines 50-57).
The intended use phrases such as "for a panel structure", "in response to", etc. have not been given any patentable weight because said phrases are not found to be of positive limitations.
Further, in claim 66, the "rapid reacting mixture" has not been given any patentable weight because said phrase is directed to a method of making the polyurethane layer

and, a product-by-process claim, the process is not germane to the issue of patentability of the product itself.

As for claim 67, the Wirth reference relates to an outer layer (48) and an inner layer (38) which is substantially non-cellular (col. 4, lines 57-60), and a seam defining structure is disposed in the inner layer which defines a tear seam (28). The structure layer (38) includes glass filled polymer and hence would inherently exhibit lower tensile strength as per the instant specification, page-10, paragraph- [0042].

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wirt in view of Iannazzi (5429784).

Wirt, as discussed above, fails to teach that the mesh reinforcement is fiberglass. Iannazzi discloses a reinforced air bag cover by embedding a reinforcing material into the layer such that it surrounds the tear seam (abstract). The reinforcing material can be woven mesh of fiberglass (col. 2, lines 62-67). Therefore, it would have been obvious to one having ordinary skill in the art to utilize Iannazzi's teaching of using fiberglass mesh as the reinforcement layer in the invention of Wirt with the motivation to provide for rapid and accurate tear along the seam when the air bag is deployed.

10. Claim 58 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wirt in view of Rafferty (5222760).

Wirt, as discussed above, fails to teach that a protruding peripheral wall from the seam defining structure layer and away from the outer layer. Rafferty discloses an air bag panel (16) with tear seam (abstract) and comprising an outer layer (18), an inner layer (32) and a seam structure layer (30) havinga tear seam (50). As shown in figure-3, the seam structure layer is provided with protruding walls adjacent the end portions (52, 54) and said walls protrude away from the outer layer. Therefore, it would have been obvious to one having ordinary skill in the art to utilize Rafferty's teaching of using protruding walls from the seam structure layer and away from the outer layer in the invention of Wirt to provide for enhanced strength to the seam structure.

Allowable Subject Matter

11. Claims 59-64 are allowed.

The prior art uncovered so far fails to teach or suggest that the outer layer comprises a water-dispersed composition comprising at least one light-stable thermoplastic polyurethane and a cross-linker; and the inner layer is cross-linked about the seam defining structure with the polyurethane of the outer layer via residual unreacted functional groups of the cross-linker to form interfacial chemical bonding between the inner surface of the outer layer and an adjacent surface of the inner layer.

Double Patenting

12. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory

obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

13. Claims 53-67 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6,753,057. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant application and Patent'057 are directed to a layered composite structure having the same structure of an inner layer, outer layer, and a seam defining structure. However, Patent'057 fails to teach that the seam defining structure being made of a material having a lower tensile strength than the inner member. It would have been obvious to one having ordinary skill in the art to modify Patent'057 by providing the seam defining structure to have lower tensile strength because the presence of fillers therein as stated in the Patent'057, col. 6, lines 15-18.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nasser Ahmad whose telephone number is 571-272-1487. The examiner can normally be reached on 7:30 AM to 5:00 PM, and on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nasser Ahmad 11/9/05
Primary Examiner
Art Unit 1772

N. Ahmad.
November 9, 2005.